

Attachment 1

Before the Federal Communications Commission Washington DC 20554

Request for Waiver of a Decision of the)	
Universal Service Administrator by)	January, 10, 2014
Educational Service Unit #4)	
Filing for multiple districts)	
Auburn, Nebraska)	
Schools and Libraries Division)	
Universal Service (SLD))	CC Docket No. 02-6
)	

Request for Review or Waiver

In accordance with Sections 54.719 through 54.721 of the Commission's Rules, Educational Service Unit #4 (ESU-4), requests Federal Communications Commission (Commission) review of a decision by the Schools and Libraries Division of the Universal Service Administrative Company (Administrator) to deny E-Rate funding for the ESU-4 and schools districts also denied funding as a result of BEN 138326 Educational Service Unit #4 providing the RFPs for FCC Forms 470 645580000984655 and 998830000984496. Consistent with precedent, ESU-4 asks the Commission to waive the decision for all affected Funding Requests (95 total) that appear in Appendix 1.¹

Background

Section 54.503(c)(4) of the Commission's rules states that Erate applicants must wait 28 days after their FCC Forms 470 are posted to USAC's website, or after public availability of an applicant's request for proposal (RFP), before entering into an agreement with a service provider for the requested services.

The Commission has granted waivers of the 28 day posting window when a contract is signed within three days of the 28 day deadline. *See, for Review of the Decision of the Universal Service Administrator by Aberdeen School District, Aberdeen, WA, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-297249, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 8757 (2007). The Commission held in *Aberdeen* that good cause existed to grant a waiver because "several of these Petitioners, while not waiting the full 28 days before entering into an agreement, only missed the 28-day deadline by a minimal number of days (*i.e.*, one to three days) and therefore their requests for discounted services were subject to competitive bidding for a meaningful period of time." *Id.*

With this Petition, ESU-4 maintains and asserts the procurement for the services here under appeal absolutely complied with all state and local procurement laws, regulations and policies. The sole issue at hand is requiring the bids in 26 days rather than the 28 days established by rule.

Alternatively, and in the public interest, ESU-4 asks the Commission to waive applicable rules and/or policies in this instance and restore funding to all FRNs denied by the SLD. This appeal is timely filed within 60 days of the Schools and Libraries Division (SLD) decision.

Discussion

ESU-4 issued an RFP, posted a Form 470, evaluated responses, and awarded a contract for High Speed Internet Access. ESU-4 applied for E-Rate discounts within the Form 471 filing window and submitted Item 21 attachments for each FRN. The total number of districts for which Forms 471 were submitted equals 95, and the total number of FRNs requested total 95.

Mr. Hummel, an ESU-4 employee, began his Erate application experience in 1999 filing for the organization's phone service. FY 2012-13 was the first year that ESU-4 filed as a

consortium. Prior to this year, another ESU had been involved in filing for Internet and WAN service. 2011-12 was the first year Mr. Hummel had filed any type of RFP for a 470. He states that prior to working with a consortium RFP, "All of my erate experience was mainly for phone service."

During application review the Program Integrity Assurance (PIA) reviewer requested all documentation related to vendor selection. ESU-4 provided a copy of the RFP, bid responses, and evaluations. The reviewer noted that the Form 470 was not available for the 28-day requirement. Mr. Hummel's inexperience with the RFP processes and minimal experience with Erate filing rules played a key factor in failing to meet the 28-day requirement for positing Forms 470/RFPs. The Form 470 was available for 26 days. The commission has waived this requirement when schools were within 1-3 days of the 28 day deadline, and there was no evidence of fraud, waste or abuse, on the part of the school. See e.g., *for Review of the Decision of the Universal Service Administrator by Aberdeen School District, Aberdeen, WA, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-297249, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 8757 (2007); *for Review of the Decision of the Universal Service Administrator by Albert Lea Area Schools, Albert Lea, Minnesota, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-517274, et al., 24 FCC Rcd 4533 (2009) (waiving 28 day requirement because it is consistent with the underlying policy); *for Review of the Decision and/or Waiver of the of the Universal Service Administrator by Al-Ishan Academy South Ozone Park, New York, et al.; Libraries Universal Service Support Mechanism*, File Nos. SLD-57979,582051, 582081, et al.; 26 FCC Rcd 16415 (2011)(granting waiver of the 28 day requirement for one school). ESU-4 missed the 28 day requirement by 2 days, and there is no evidence of fraud, waste, or abuse.

Conclusion

In light of the facts and clarifications presented here, ESU-4 asks the Commission to waive the 28-day posting violations for the FRNs listed in Appendix 1 in accordance with Commission precedent and the underlying policies behind E-rate applications.

Respectfully submitted this 10th day of January, 2014,

A handwritten signature in cursive script that reads "Charles Hummel".

Charles Hummel, ESU 4 and DVLG E-rate Coordinator

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APPENDIX 1:

BEN 138326 EDUCATIONAL SERVICE UNIT #4 provided an RFP for FCC Forms 470 645580000984655 and 998830000984496, upon review we find that the RFPs were not available for service providers to review for 28 days (from release date to due date). The RFPs were posted on 12/21/11 and the due date for bids was 1/16/12. In order to ensure a fair competitive bidding process, the FCC Form 470 and RFP must be posted for 28 days before vendor evaluation/selection can be performed. Based on this documentation, the following list of FRNs will be denied. The commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.

BEN	NAME	FY	FCC Form 471	FRN
78594	BENNET ELEMENTARY SCHOOL	2012	867886	2365440
78594	BENNET ELEMENTARY SCHOOL	2013	914954	2493825
78606	JOHNSON CO. CENTRAL MIDDLE SCHOOL	2012	867694	2364876
78669	MILLIGAN ELEMENTARY SCHOOL	2012	867389	2363982
78674	NEBRASKA SCHOOL FOR VIS HNDCPD	2012	847971	2331158
78674	NEBRASKA SCHOOL FOR VIS HNDCPD	2012	851890	2336475
78674	NEBRASKA SCHOOL FOR VIS HNDCPD	2013	916696	2499093
138326	EDUCATIONAL SERVICE UNIT #4	2012	848022	2322772
138326	EDUCATIONAL SERVICE UNIT #4	2012	851509	2336590
138329	AUBURN PUBLIC SCHOOL DISTRICT	2012	848018	2328201
138329	AUBURN PUBLIC SCHOOL DISTRICT	2012	849509	2336613
138329	AUBURN PUBLIC SCHOOL DISTRICT	2013	909727	2477302
138329	AUBURN PUBLIC SCHOOL DISTRICT	2013	914732	2493215
138349	CRETE PUBLIC SCHOOL DISTRICT	2012	847989	2328292
138349	CRETE PUBLIC SCHOOL DISTRICT	2012	851498	2336606
138349	CRETE PUBLIC SCHOOL DISTRICT	2013	898048	2447292
138349	CRETE PUBLIC SCHOOL DISTRICT	2013	915793	2496403
138361	DORCHESTER PUBLIC SCHOOL DIST	2012	847697	2331200
138361	DORCHESTER PUBLIC SCHOOL DIST	2012	851505	2336597
138372	FALLS CITY PUBLIC SCHOOL DIST	2012	847123	2331043
138372	FALLS CITY PUBLIC SCHOOL DIST	2012	851772	2336583
138378	FRIEND PUBLIC SCHOOL DISTRICT	2013	907540	2470297
138378	FRIEND PUBLIC SCHOOL DISTRICT	2013	915882	2496706
138380	FILLMORE CENTRAL PUBLIC SCHOOL DISTRICT	2012	859179	2344683
138380	FILLMORE CENTRAL PUBLIC SCHOOL DISTRICT	2012	859226	2353469

138380	FILLMORE CENTRAL PUBLIC SCHOOL DISTRICT	2013	906105	2465852
138380	FILLMORE CENTRAL PUBLIC SCHOOL DISTRICT	2013	915860	2496557
138393	JOHNSON-BROCK PUBLIC SCHOOLS	2012	847078	2331091
138393	JOHNSON-BROCK PUBLIC SCHOOLS	2012	851821	2336563
138394	LEWISTON CONSOLIDATED SCHOOLS	2012	847950	2331078
138394	LEWISTON CONSOLIDATED SCHOOLS	2012	851817	2336571
138394	LEWISTON CONSOLIDATED SCHOOLS	2013	909914	2477928
138394	LEWISTON CONSOLIDATED SCHOOLS	2013	914932	2493731
138395	MCCOOL JUNCTION PUBLIC SCHOOLS	2012	848002	2331107
138395	MCCOOL JUNCTION PUBLIC SCHOOLS	2012	851835	2336555
138395	MCCOOL JUNCTION PUBLIC SCHOOLS	2013	907581	2470325
138395	MCCOOL JUNCTION PUBLIC SCHOOLS	2013	915960	2496903
138396	MALCOLM PUBLIC SCHOOL DISTRICT	2012	847930	2331101
138396	MALCOLM PUBLIC SCHOOL DISTRICT	2012	851828	2336560
138407	NEBRASKA CITY PUBLIC SCHOOLS	2012	847086	2331121
138407	NEBRASKA CITY PUBLIC SCHOOLS	2012	851850	2336549
138407	NEBRASKA CITY PUBLIC SCHOOLS	2013	909931	2477976
138407	NEBRASKA CITY PUBLIC SCHOOLS	2013	914947	2493776
138417	PALMYRA SCHOOL DISTRICT O R 1	2012	847690	2331185
138417	PALMYRA SCHOOL DISTRICT O R 1	2012	860356	2365308
138417	PALMYRA SCHOOL DISTRICT O R 1	2013	909943	2477998
138417	PALMYRA SCHOOL DISTRICT O R 1	2013	914952	2493810
138419	PAWNEE CITY PUBLIC SCHOOLS	2012	847162	2331179
138419	PAWNEE CITY PUBLIC SCHOOLS	2012	851899	2336447
138419	PAWNEE CITY PUBLIC SCHOOLS	2013	909968	2478051
138419	PAWNEE CITY PUBLIC SCHOOLS	2013	914964	2493876
138422	SEWARD PUBLIC SCHOOL DISTRICT	2012	859135	2344698
138422	SEWARD PUBLIC SCHOOL DISTRICT	2012	859159	2353212
138423	SHICKLEY PUBLIC SCHOOL DIST	2012	847940	2331127
138423	SHICKLEY PUBLIC SCHOOL DIST	2012	851855	2336539
138423	SHICKLEY PUBLIC SCHOOL DIST	2013	914593	2492752
138423	SHICKLEY PUBLIC SCHOOL DIST	2013	916050	2497078
138427	STERLING PUBLIC SCHOOL DIST	2012	847230	2331132
138427	STERLING PUBLIC SCHOOL DIST	2012	851857	2336526

138427	STERLING PUBLIC SCHOOL DIST	2013	909960	2478111
138427	STERLING PUBLIC SCHOOL DIST	2013	914968	2493897
138431	SYRACUSE-DUNBAR-AVOCA SCH DIST	2012	847145	2331134
138431	SYRACUSE-DUNBAR-AVOCA SCH DIST	2012	851862	2336523
138431	SYRACUSE-DUNBAR-AVOCA SCH DIST	2013	909989	2478173
138431	SYRACUSE-DUNBAR-AVOCA SCH DIST	2013	914976	2493939
138448	WILBER-CLATONIA PUBLIC SCHOOLS	2012	847967	2331143
138448	WILBER-CLATONIA PUBLIC SCHOOLS	2012	851868	2336490
138448	WILBER-CLATONIA PUBLIC SCHOOLS	2013	909279	2475953
138448	WILBER-CLATONIA PUBLIC SCHOOLS	2013	916089	2497199
138455	YORK PUBLIC SCHOOL DISTRICT	2013	909285	2476027
138455	YORK PUBLIC SCHOOL DISTRICT	2013	916104	2497217
197057	HEARTLAND COMMUNITY SCHOOLS	2012	847259	2331054
197057	HEARTLAND COMMUNITY SCHOOLS	2012	851795	2336579
197057	HEARTLAND COMMUNITY SCHOOLS	2013	907588	2470331
197057	HEARTLAND COMMUNITY SCHOOLS	2013	915897	2496751
202483	LIFE SKILLS	2012	869366	2369961
202483	LIFE SKILLS	2012	869366	2410457
202495	FILLMORE CENTRAL MIDDLE SCHOOL	2012	864377	2353928
202495	FILLMORE CENTRAL MIDDLE SCHOOL	2013	915870	2496636
231485	EXETER-MILLIGAN PUBLIC SCHOOL DISTRICT	2012	847096	2331210
231485	EXETER-MILLIGAN PUBLIC SCHOOL DISTRICT	2012	851755	2336585
231485	EXETER-MILLIGAN PUBLIC SCHOOL DISTRICT	2013	905512	2464179
231485	EXETER-MILLIGAN PUBLIC SCHOOL DISTRICT	2013	915763	2496461
16044090	JOHNSON CO CENTRAL PUBLIC SCHOOLS	2012	847641	2331193
16044090	JOHNSON CO CENTRAL PUBLIC SCHOOLS	2012	860372	2364714

II. BEN 138326 EDUCATIONAL SERVICE UNIT #4 responded to a Special Compliance Review Information Request and they provided a Request for Proposal (RFP), upon review we find that the RFPs posted for FCC Forms 470 645580000984655 and 998830000984496 was not available for service providers to review for 28 days (from release date to due date). The RFPs were posted on 12/21/11 and the due date for bids was 1/16/12. In order to ensure a fair competitive bidding process, the FCC Form 470 and RFP (if applicable) must be posted for 28 days before vendor evaluation/selection can be performed. Based on this documentation, the following list of FRNs will be denied.

BEN	NAME	FY	FCC Form 471	FRN
78669	MILLIGAN ELEMENTARY SCHOOL	2013	915819	2496522
138326	EDUCATIONAL SERVICE UNIT #4	2013	916528	2498899
138326	EDUCATIONAL SERVICE UNIT #4	2013	916640	2499035
138372	FALLS CITY PUBLIC SCHOOL DIST	2013	909743	2477401
138372	FALLS CITY PUBLIC SCHOOL DIST	2013	914779	2493277
138393	JOHNSON-BROCK PUBLIC SCHOOLS	2013	909807	2477548
138393	JOHNSON-BROCK PUBLIC SCHOOLS	2013	914875	2493614
138422	SEWARD PUBLIC SCHOOL DISTRICT	2013	907645	2470626
138422	SEWARD PUBLIC SCHOOL DISTRICT	2013	916021	2497052
202483	LIFE SKILLS	2013	916692	2499076